

12

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 447.

THE UNITED STATES, APPELLANT,

VS.

THE SUPPLEE-BIDDLE HARDWARE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 31, 1923.

(29757)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 447.

THE UNITED STATES, APPELLANT,

vs.

THE SUPPLEE-BIDDLE HARDWARE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Record from Court of Claims-----	1	1
Petition-----	1	1
General traverse-----	8	3
Argument and submission-----	8	3
History of proceedings-----	8	3
Order amending findings and conclusions-----	9	4
Amended findings of fact-----	10	4
Conclusion of law-----	13	7
Opinion, Hay, J.-----	13	7
Judgment-----	16	10
Petition for and order allowing appeal-----	16	10
Clerk's certificate-----	17	10



1 In the Court of Claims of the United States.

THE SUPPLEE-BIDDLE HARDWARE
Co., Plaintiff,

vs.

THE UNITED STATES, DEFEND-
ant.

No. B-198.

I. *Petition.*

Filed September 23, 1922.

To the honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents:

1. The plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania, and has its principal place of business at the city of Philadelphia, in said State, and is engaged in the business of selling hardware and allied merchandise.

2 2. On February 14, 1917, Robert Biddle, 2nd, was made president of the plaintiff corporation. Said Robert Biddle, 2nd, had come into the employ of plaintiff early in life and had acquired vast knowledge of the business conducted by plaintiff and had been promoted from one position to another until he was called to the presidency by the board of directors. In addition to his intimate knowledge of the business, said Robert Biddle, 2nd, was possessed of great executive capacity, and because of his knowledge of the business and of his ability to manage the affairs and personnel of the corporation his services were of immense value to the plaintiff and could not easily be replaced.

3. Plaintiff, realizing the value of the services of its said president, Robert Biddle, 2nd, caused two policies of life insurance to be taken out on his life, in order, so far as possible, to save the company harmless from great and irreparable loss in the event of his death. Accordingly, for the protection of the company, as aforesaid, on the 12th day of April, 1917, the said Robert Biddle, 2nd, took out a policy of insurance on his life in the Provident Life and Trust Company in the principal sum of \$50,000, and on the 13th day of April, 1917, he took out an additional policy of insurance on his life in the Travellers' Insurance Company in the principal sum of \$50,000. Both of said policies were for a term of five years, all of the premiums being paid for the risk and by the terms of said policies the plaintiff was not to recover any of the premiums or any other principal sum except by reason of the death of said Robert Biddle,

3 2nd, and in the event of his death the amount due under both the said policies was payable to the Supplee-Biddle Hardware Company. The premiums on said policies were paid by the plaintiff.

4. During the year 1918 the said Robert Biddle, 2nd, contracted influenza and died on the 12th day of October, 1918. He was then of the age of thirty-eight years, in the prime of his business life, and of inestimable value to the company. After his death, and

during the taxable year 1918 the insurance companies above mentioned paid to plaintiff on said policies, in all, the sum of \$100,000, which, after deducting the premiums paid, made the net proceeds of said policies the sum of \$97,947.28.

5. The plaintiff regarded this payment of \$100,000 as an indemnity or return of capital, and not as income within sense of the revenue act of 1918 and the 16th Amendment to the Constitution of the United States, and accordingly made a return to the Commissioner of Internal Revenue for the year 1918, reporting a net income of \$187,762.58, which did not include said sum of \$97,947.28, being the proceeds of said life insurance policies as aforesaid. Plaintiff did attach to its return, however, for the information of the Commissioner of Internal Revenue, a statement showing that it had received, in addition to said net income, the sum of \$97,947.28 as the proceeds of the life insurance policies on the life of Robert Biddle, 2nd, above referred to.

6. Over the protest of plaintiff, and contrary to the provisions of the revenue act of 1918 and the 16th Amendment to the Constitution of the United States, the Commissioner of Internal Revenue added the proceeds of said insurance, to wit, \$97,947.28, after allowing a deduction of \$2,052.72 for the premiums paid from the \$100,000 received by plaintiff, to the net income as reported and increased the net income by other additions, not here material, to the sum of \$296,221.44. Upon the submission of its original return, plaintiff had paid a tax of \$57,887.72, but because of the additions to net income made by the Commissioner of Internal Revenue an additional tax was assessed in the sum of \$93,991.26, which sum plaintiff was required to pay by the Collector of Internal Revenue and did pay under protest, together with a penalty of \$4,468.50 for alleged negligence in not reporting the proceeds of said insurance policies.

7. Owing to the action of the Commissioner of Internal Revenue in requiring the proceeds of said insurance policies to be reported as net income, together with the infliction of penalty for failure to report same as net income, plaintiff was compelled to pay a tax of \$84,737.95, in addition to what it would have had to pay had the proceeds of said insurance policies not been taxed as income. Plaintiff says that the proceeds of said insurance policies was not income within the meaning of the revenue act of 1918, nor the 16th Amendment to the Constitution of the United States, but was in fact a return of capital and was not taxable as income. Plaintiff says that said tax of \$84,737.95 on the \$97,947.28 received as the proceeds of said insurance policies was practically a confiscation of said proceeds and was erroneously and illegally exacted, contrary to the provisions of the Constitution of the United States and the revenue act of 1918.

8. On the 29th day of March, 1921, plaintiff filed a claim for refund with the Commissioner of Internal Revenue, asking for the refund of said \$84,737.95, which claim was by said Commissioner rejected on the 14th day of September, 1921.

9. On the 22nd day of July, 1921, plaintiff requested a reassessment of its taxes under section 328a of the revenue act of 1918, and the Commissioner of Internal Revenue, after making a comparison between the net income of the plaintiff and of companies doing a like kind of business, made a reassessment of plaintiff's taxes and returned to plaintiff on July 14, 1922, the sum of \$29,584.06, together with interest, and plaintiff, therefore, deducts said sum of \$29,584.06 from the said sum of \$84,737.95 and asks judgment for the difference, or \$55,153.89.

10. No other action has been had on said claim in Congress or by any of the departments; no person other than plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or any part thereof or interest therein, has been made; plaintiff is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the plaintiff has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States.

Wherefore, plaintiff asks judgment against the United States in the sum of fifty-five thousand one hundred and fifty-three dollars and eighty-nine cents (\$55,153.89).

THE SUPPLEE-BIDDLE HARDWARE CO.,
By WILLIAM B. MUNROE,

President.

A. MITCHELL PALMER,
Attorney for Plaintiff.

FREDERICK L. CLARK,

FRANK DAVIS, JR.,

WM. D. HARRIS,

Of Counsel.

7 Jurat showing the foregoing was duly sworn to by Wm. B. Munroe. Omitted in printing.

8 II. *General traverse.*

Entered Nov. 23, 1922.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. *Argument and submission of case.*

On April 24, 1923, this case was argued and submitted by Messrs. A. Mitchell Palmer and Frederic L. Clark, for the plaintiff, and by Messrs. Fred K. Dyar and R. B. Burchard, for the defendant.

IV. *History of proceedings.*

On May 7, 1923, the court filed findings of fact and conclusion of law, with an opinion by Hay, J., and entered judgment in favor of plaintiff in the sum of \$55,153.89.

On May 21, 1923, the plaintiff filed a motion to amend the findings of fact and judgment.

9 V. *Order of court amending findings, etc.*

Entered May 28, 1923.

It is ordered by the court that the plaintiff's motion to amend findings and judgment be and the same is allowed.

The former findings of fact and conclusion of law are vacated, set aside, and withdrawn, and amended findings of fact with conclusion of law entering judgment in favor of the plaintiff in sum of \$62,866.23 are now filed nunc pro tunc as of May 7, 1923—the opinion to stand.

By THE COURT.

10 VI. *Findings of fact, as amended, filed May 28, 1923, nunc pro tunc as of May 7, 1923, and opinion of the Court by Hay, J.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Amended findings of fact.

I.

The plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania and has its principal place of business at the city of Philadelphia, in said State, and is engaged in the business of selling hardware and allied merchandise.

Robert Biddle, 2d, when about 18 years of age, entered the employ of the Biddle Hardware Company, a partnership, about the year 1899. About January 1, 1914, the Biddle Hardware Company and the Supplee Hardware Company were united and incorporated as the Supplee-Biddle Hardware Company, and at that time Robert Biddle, 2d, became the general manager of the Supplee-Biddle Hardware Company.

II.

On February 14, 1917, Robert Biddle, 2d, was elected president of the plaintiff corporation by appropriate action of the board of directors, and assumed the presidency of said plaintiff company. He was 37 years of age, and at that time the outstanding capital stock of the plaintiff company was \$800,000 par value and the annual sales were about \$450,000.

III.

At the instance of the directors of the plaintiff company said Robert Biddle, 2d, on April 12, 1917, took out a policy of insurance on his own life, payable in the event of his death to the Supplee-Biddle Hardware Company as beneficiary, with the Provident Life & Trust Company in the principal sum of \$50,000, and on

11 April 13, 1917, he took out an additional policy of insurance on his life with the Travellers Insurance Company in the principal sum of \$50,000, payable to the Supplee-Biddle Hardware

Company in the event of his death. Both of said policies were for a term of five years, all the premiums being paid for the risk, and by the terms of the said policies the plaintiff was not to recover any of the premiums or any other principal sum except by reason of the death of said Robert Biddle, 2d. The premiums of said policies were paid by the plaintiff.

These insurance policies were taken out in good faith, the said Robert Biddle, 2d, being a good moral risk and in perfect physical health. The policies were taken out for the purpose of providing a fund to make secure the financial position of the company in the event of the death of the said Robert Biddle, 2d, and to indemnify the plaintiff against losses to its earning power which his death would occasion.

Robert Biddle, 2d, was a man of ability, energy, and initiative, and was so regarded in the hardware trade and by the banks with which the plaintiff dealt. At the time of his death there was no member of the plaintiff company who was qualified to take his place, and more than a year passed before a person could be found who was suitable to act as president of the company.

IV.

During the year 1918 said Robert Biddle, 2d, contracted influenza and died on the 12th day of October, 1918, he being at the date of his death 38 years of age. After his death the Provident Life & Trust Company paid, on October 22, 1918, to the Supplee-Biddle Hardware Company the sum of \$50,073.78, and on the 28th day of October, 1918, the Travellers Insurance Company paid to the Supplee-Biddle Hardware Company the sum of \$50,000. After deducting the premiums theretofore paid to said insurance companies in the sum of \$2,126.50 the net proceeds of said policies amounted to the sum of \$97,947.28.

V.

In accordance with the revenue act of 1918 the Supplee-Biddle Hardware Company made a return to the Commissioner of Internal Revenue of its income for the year 1918 showing a net income of \$187,762.58, which said net income as so reported did not include the proceeds of said insurance policies in the sum of \$97,947.28 received during said taxable year. Plaintiff when making its said return attached physically thereto a memorandum for their information of the Commissioner of Internal Revenue as follows:

"This return does not include \$97,947.28, being the net proceeds of a life insurance policy upon the life of Robert Biddle, 2d, late president of this company, who died in October, 1918, as the company claims that the amount of the policy, less the premiums paid, being the amount above set forth, is not taxable."

VI.

Upon a reexamination of plaintiff's tax return for the year 1918 the Commissioner of Internal Revenue added the proceeds of said

insurance policies, to wit, the sum of \$97,947.28, to the net income as reported in its tax return and made other additions to the net income, not here material, increasing it to the sum of \$296,221.44. Upon the submission of the original return plaintiff had paid a tax of \$57,887.22, but because of the additions to the net income made by the Commissioner of Internal Revenue an additional tax was assessed in the sum of \$93,991.26, and a penalty was added in the sum of \$4,468.50 for negligence in not reporting formally the proceeds of said insurance policies, making in all an additional assessment of \$98,459.76, which said sum plaintiff was required to pay and did pay under protest on January 8, 1921.

VII.

Because of the inclusion of the proceeds of said insurance policies, to wit, the sum of \$97,947.28, as income, the plaintiff was required to pay a tax of \$84,737.95 more than it would have had to pay had not the said proceeds of said insurance policies been included in and taxed as income.

VIII.

On the 29th day of March, 1921, plaintiff filed a claim for refund with the Commissioner of Internal Revenue, asking for the refund of said \$84,737.95, which claim was by said commissioner rejected on the 14th day of September, 1921.

IX.

On the 22d day of July, 1921, plaintiff requested a reassessment of its taxes under section 328a of the revenue act of 1918, and the Commissioner of Internal Revenue, after making a comparison between the net income of the plaintiff and of companies doing a like kind of business, made a reassessment of plaintiff's taxes and returned to plaintiff on July 14, 1922, the sum of \$29,584.06, together with interest. In making the reassessment of said taxes the Commissioner of Internal Revenue included the proceeds of said insurance policies above mentioned as income.

X.

The difference between the amount of tax paid on the proceeds of said insurance policy and the amount refunded because of the reassessment of its taxes amounts to \$55,153.89.

XI.

No other action has been had on said claim in Congress or by any of the departments; no person other than plaintiff is the
13 owner thereof or interested therein; no assignment or transfer of this claim, or any part thereof or interest therein, has been made; there are no credits or offsets; the plaintiff has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given

encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States.

Conclusion of law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of \$55,153.89, with interest at the rate of 6 per cent per annum from January 8, 1921, amounting to \$7,712.34, in all the sum of sixty-two thousand eight hundred and sixty-six dollars and twenty-three cents (\$62,866.23).

Opinion.

HAY, Judge, delivered the opinion of the court.

This is a suit brought by the plaintiff to recover from the United States the sum of \$55,153.89 as revised tax levied on the sum of \$97,947.28, being the proceeds of two life insurance policies paid to the plaintiff on the death of its president, Robert Biddle, 2d, whose life had been insured by the plaintiff for its benefit.

It is admitted that Robert Biddle, 2d, the president of the plaintiff company, was the managing head of the company; that he was a business man of ability, energy, and initiative, and by reason of his business ability and the confidence which he inspired in those with whom he came in contact in his business he was a valuable asset to the plaintiff company. His activities in the business produced returns from the business which before his management of the company it had not earned. The death of such an executive head of the business would necessarily cause the company loss in income and in efficiency, and such loss and want of efficiency would continue until a president could be found who could take the place of the deceased president. It was the part of prudence in the plaintiff company to anticipate the possible loss which it might incur by insuring for its benefit the life of its president, and this it did by having Robert Biddle, 2d, take out two life insurance policies amounting to \$100,000 payable to the plaintiff company and upon which the company paid the premiums. This action on the part of the plaintiff company was of the same character which causes prudent men to insure against loss by fire or against any other casualty which may overtake men engaged in business. Such being the character of the transaction, upon the death of Robert Biddle, 2d, do the proceeds of the insurance policies become taxable under the provisions of the revenue act of 1918, or are these proceeds to be regarded as indemnity for the loss incurred by the plaintiff company by reason of his death? If the latter, then the company should have not been required to pay the tax.

The revenue act of 1918 treated individuals separately from corporations, and the tax is levied separately, yet in defining the

14 "gross income" for corporations section 233 of the act provides: "That in the case of a corporation subject to the tax

imposed by section 230 the term 'gross income' means the gross income as defined in section 213." Section 213 reads as follows:

"That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—

"(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but—

"(b) Does not include the following items, which shall be exempt from taxation under this title: (1) The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured." (40 Stat. 1057, 1065.)

It will be observed that no mention was made of the proceeds of life insurance in that part of the act dealing with corporations. The fact that in that part of the act dealing with individuals mention was made specifically of proceeds of life insurance can hardly be used to carry the implication that such proceeds must be regarded as income when they are received by corporations. It would be more logical to imply that as the act declared the proceeds of policies of life insurance was not income in the case of individuals the same definition of income applied in the case of corporations, and as the act had defined what income was in one case it was not necessary to define it in the other. Especially is this true when it is remembered that the definition of "gross income" is the same in both cases, and in construing the act with reference to the proceeds of insurance policies, whether individual or corporate, it would not be a strained construction to say that as the definition of "gross income" is the same in both cases the item of proceeds of insurance policies excluded in the one case is also excluded in the other—that it is not in fact an exemption but a definition of what is and what is not income within the meaning of the act, and to clinch the matter the revenue act of 1921 makes no distinction between individual and corporation life insurance policies.

Section 213 of that act now reads: "(b) Does not include the following items, which shall be exempt from taxation under this title:

(1) The proceeds of life insurance policies paid upon the death of the assured"; and consequently the Commissioner of Internal Revenue now holds that such proceeds paid to corporations are not taxable as income. (Reg. 62, art. 541, 1922.) It is thus seen that while it was held that such proceeds were taxable as income because they were not included under the provisions dealing with corporations in the act of 1918, yet they are now held not to be taxable as income notwithstanding the fact that the provisions of the act of 1921 dealing with corporations do not mention proceeds of life insurance; but because the words "to individual beneficiaries or the estate of the insured" are left out of the act of 1921 it is now held that the proceeds of life insurance policies are not income, although the provision is included under the provisions dealing with individuals. It would seem that if the proceeds of life insurance were taxable as income under the one act they would be taxable under the other, but a fair construction of the act of 1918 would seem to be that the proceeds of life insurance are not taxable as income whether the beneficiaries are individuals or corporations. And this construction is fortified by the action of Congress in the act of 1921 by eliminating the words "individual beneficiaries." The inference is clear that the intention of Congress was not to tax as income the proceeds of life insurance policies irrespective of the status of the beneficiary, whether individual or corporate.

We do not think Congress intended to tax the proceeds of life insurance policies as income, because such proceeds are not income in the accepted meaning of that word.

The word "income" means the gain which accrues from property, labor, or business. And the Supreme Court of the United States in the case of *Merchants Loan & Trust Co. v. Smietanka*, 225 U. S. 509, 518, has defined the meaning of the word "income" as follows: "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets."

It can not be said that the proceeds of life insurance policies come within the meaning of the above definition. It seems to us that in this case the contract of insurance was a contract to indemnify the plaintiff for the loss which it would incur by reason of the death of its president. The plaintiff company did not invest money with any expectation that it would receive a return from it. On the contrary, the money which it expended in paying the premiums on the policies might very well never have been returned to it; the probabilities were that the money would not have been returned, because the person insured had a much greater expectation of life than five years, the term of the policy. The money so paid out can not be considered an investment from which the company could expect an income.

The plaintiff is entitled to judgment; and it is so ordered.

GRAHAM, Judge; DOWNEY, Judge; BOOTH, Judge; and CAMPBELL, Chief Justice, concur.

VII. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the twenty-eighth day of May, A. D. 1923, judgment was ordered to entered nunc pro tunc as of May 7, 1923, as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of sixty-two thousand eight hundred and sixty-six dollars and twenty-three cents (\$62,866.23).

BY THE COURT.

VIII. *Defendant's application for appeal.*

Filed July 6, 1923.

From the judgment rendered in the above-entitled cause on the 7th day of May, 1923, in favor of claimant, the defendants, by their Attorney General, on the 6th day of July, 1923, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

IX. *Order of court allowing appeal.*

It is ordered by the court that the defendant's application for appeal be and the same is allowed.

BY THE COURT.

Entered July 6, 1923.

Court of Claims of the United States.

[Title omitted.]

Clerk's certificate.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact (as amended), conclusion of law, and opinion of the court by Hay, J., of the judgment of the court; of the defendant's application for appeal; of the order of the court allowing said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this eighteenth day of July, A. D., 1923.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 29,757. Court of Claims. Term No. 447. The United States, appellant, vs. The Supplee-Biddle Hardware Company. Filed July 21st, 1923. File No. 29,757.

